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DUNCAN *v.* CARSON.

Sept. 16, 1920.

[105 S. E. 62.]

1. Motions (§ 54*)—Object of “Nunc Pro Tunc Order” Stated.—The object of a “nunc pro tunc” order is to make the record show something which actually took place at a former day of the court, but which the record does not disclose, and not to permit something to be done which was omitted by oversight or otherwise.

[Ed. Note.—For other cases, see 10 Va. W. Va. Enc. Dig. 125.]

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Nunc pro Tunc.]

2. Motions (§ 64*)—Nunc Pro Tunc Order Is Indisputable.—A nunc pro tunc order is record evidence of the fact stated, and is indisputable.

3. Trial (§ 156 (1)*)—Demurrer to Evidence Must Be Argued at Same Term as That at Which Verdict Is Rendered.—The ordinary practice, on a demurrer to the evidence, is for counsel to argue demurrer at same term as that at which jury renders verdict, in which case court may either decide demurrer or take time to consider it, but by agreement of counsel and assent of court the argument may be deferred to a later date.

4. Pleading (§ 335*)—Defendant Not Required to Give Notice of Time and Place of Filing Pleas.—A defendant is not required to give notice of the time and place of filing his pleas.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 128.]

5. Appeal and Error (§ 884*)—Plaintiff, with Sufficient Notice of Tender of Plea Failing to Withdraw Demurrer to Evidence Cannot Complain that He Was Surprised.—Where plaintiff had notice of tender of plea in ample time to have withdrawn his demurrer to the evidence if he had desired to do so, he cannot, after having failed to do so, complain on appeal that he was taken by surprise or injured by the effect of his voluntary inaction.

6. Trial (§ 155*)—On Demurrer to Evidence Jury May Assess Damages.—On a demurrer to the evidence, the jury do not pass on merits of case nor on liability of parties, but only fix the amount of the damages subject to the opinion of the court on the question of liability.

7. Trial (§ 83 (2)*)—General Objection to Testimony Properly Overruled if Admissible on Any Ground.—A general objection to

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

testimony is properly overruled if the testimony is admissible on any ground.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 299.]—

8. Courts (§ 206 (17¾*))—Statute Held Not to Confer Original Jurisdiction on Supreme Court of Appeals.—Code 1919, § 6365, requiring Supreme Court of Appeals to enter such judgment, decree, or order as to the court shall seem right and proper, held not to confer original jurisdiction on the court in violation of Const. 1902, § 88.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 706.]

9. Appeal and Error (§ 241*)—Assignments Not within Grounds of Demurrer to Evidence Not Considered.—On error to review judgment on demurrer to the evidence, assignments of error not within the grounds of the demurrer to the evidence will not be considered under Code 1919, § 6117.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 476.]

On petition for rehearing. Petition denied.

For former opinion, see 103 S. E. 665.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.